IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1479 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FOOD CORPORATION OF INDIA EMPLOYEES CO OP HOU. SOCIETY

Versus

PRABHUDAS JADAVJIBHAI JHAKHARIA

Appearance:

MS PREETI S PARMAR for Petitioner No. 1

MR SV PARMAR for Petitioner No. 1

MR SN THAKKAR for Respondent No. 1

NOTICE SERVED for Respondent No. 1,2-3

MR HD DAVE, Ld. AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 12/07/2004

ORAL JUDGEMENT

Leave to delete Respondent No.2.

Rule. Mr.Thakkar, learned Counsel for respondent No.1 waives service of notice of rule and Mr.Dave, learned AGP waives service of notice of rule on behalf

respondent No.2 (after deletion of earlier respondent No.2). With the consent of both sides matter is taken up for final hearing today.

3. The petitioner had approached to this Court for challenging the legality and validity of various orders passed by the Tribunal in appeal, upon the application for restoration and also upon the review application. The petitioner has also challenged the legality and validity of the regulations 15(1) framed by the Tribunal.

4. Heard Mr.Parmar, learned Counsel appearing for the petitioner, Mr.Thakkar, learned Counsel appearing for the private respondent and Mr.Dave, learned AGP for the State authority.

5. Mr.Parmar appearing for the petitioner submitted that as such the proceedings of the appeal before the Tribunal were decided without hearing the petitioner and he submitted that as such the Tribunal could not have decided the appeal on merits in absence of the petitioner and at the most the Tribunal could have dismissed the appeal for default. Mr.Parmar, however, submitted that in case if this Court is inclined to consider the matter for remanding to the Tribunal for rehearing of the appeal, the petitioner would agree for a reasonable cost to be paid to respondent No.1 for compensating the default for not remaining present during the course of the hearing of the appeal before the Tribunal.

6. On behalf of respondent No.1, Mr.Thakkar submitted that as such the Tribunal was within its power to decide the appeal on merits even in absence of the appellate. However, he submitted that if this Court is inclined to give directions to the Tribunal to rehear the appeal and decide afresh upon imposition of a reasonable cost to be paid to respondent No.1 by way of compensation for default caused by the appellate before the Tribunal, respondent No.1 is agreeable.

7. In view of the above, I find that since the learned Counsel appear for both the sides have agreed on the point of remand, it may not be necessary for this Court to examine the larger issue regarding the validity of the regulation framed by the Tribunal and also on the question as to whether the Tribunal could have dismissed the appeal in absence of the appellate for default or on merits. The perusal of the impugned order passed by the Tribunal shows that as such even if the appeal is decided on merits, the Tribunal while considering the application for restoration or in review, could have considered for

imposition of a reasonable cost by way of compensation and could be given an opportunity to the petitioner to submit the case on merits and could have decided the appeal. However, it appears that the Tribunal has proceeded only on the ground that no sufficient cause is made out for restoration and for reconsideration of the issue and it has not taken into consideration the aspects as to whether the default can be compensated by imposition of suitable cost or not. I would have considered the matter further, but since the learned Counsel appearing for the contesting parties have agreed for remand, I find it proper to leave the matter at that stage.

8. The learned Counsel appearing for both the sides have submitted that they shall cooperate to the proceedings before the Tribunal in case the matter is ordered to be remanded to the Tribunal for reconsideration and they have further prayed that since the suit is pending since a very long period and the appeal is also of 2001, the Tribunal may be directed to decide the appeal afresh within some stipulated time limit.

9. Considering the aforesaid facts and circumstances, I find that the Tribunal can be directed to reconsider the appeal and decide afresh upon payment of the cost of Rs.7,500/= by the petitioner to respondent No.1. It may be stated that Mr.Parmar, learned Counsel for the petitioner has also agreed for payment of such cost on behalf of the petitioner. However, he submitted that the amount of Rs.3,000/= which has been deposited by the petitioner pending the petition in pursuance of the interim order, may be given adjustment while paying the cost.

10. Under the above circumstances, I find that the following directions shall meet with the ends of justice:-

10.1. The impugned order passed by the Tribunal in Appeal No.345/2000 and the orders passed below Application for restoration and in review are quashed and set aside on condition that the petitioner pays an amount of Rs.7,500/= as cost by way of compensation for default and for the proceedings before this Court and such amount shall be paid within a period of 15 days from today. Respondent No.1 shall be at liberty to withdraw the amount of Rs.3,000/= which has been deposited by the petitioner and the balance shall

be required to be paid by the petitioner to respondent No.1.

10.2. Appeal No.345 of 2000 shall stand restored to the file of the Tribunal and the Tribunal shall take up the hearing of the appeal and shall dispose of the appeal as early as possible, preferably within a period of three months from the date of receipt of the writ of this Court.

10.3. Until the Tribunal decides the appeal, ad-interim relief granted by this Court in this petition shall continue on condition that the petitioner shall also not transfer or alienate the plot in question to anyone else. It is needless to clarify that the Tribunal shall be at liberty to consider the merits of the matter afresh in accordance with law without being, in any manner, influenced by the observations made by this Court in this judgement.

The petition is allowed to the aforesaid extent.
Rule made absolute accordingly.

12-7-2004 (Jayant Patel, J.)